

Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

June 25, 2020

Sent Via Email Only to: bodine.susan@epa.gov

Ms. Susan Bodine, Assistant Administrator
Office of Enforcement and Compliance Assurance
Environmental Protection Agency
Mail Code: 2201A
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

**Re: Request Government-to-Government Consultation on Stibnite Site Near
Yellow Pine, Idaho**

Dear Assistant Administrator Bodine:

I write on behalf of the Nez Perce Tribal Executive Committee, the governing body of the Nez Perce Tribe ("Tribe"), with an urgent request for government-to-government consultation with you to discuss the potential execution of an Administrative Order on Consent ("AOC") or related agreement under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for the Stibnite Site near Yellow Pine, Idaho. The Tribe has left several messages with your Office requesting a meeting, but our calls have not been returned.

Midas Gold's proposed Stibnite Gold Project—the construction and long-term operation of an immense open pit gold mine in the Stibnite Mining District in the headwaters of the East Fork South Fork Salmon River—is located entirely within the Tribe's aboriginal territory and is subject to the fishing, hunting, gathering, pasturing, and traveling rights the Tribe reserved, and the United States secured, in its 1855 Treaty. The Tribe, as a co-manager of its Treaty-reserved resources, plays a leading role in the restoration of the East Fork South Fork Salmon River and South Fork Salmon River fishery, expending approximately \$2.5 million annually to restore Chinook salmon runs in both rivers through hatchery supplementation, fishery research, and watershed restoration. Further degradation of habitat in the Stibnite Site and any additional degradation of the East Fork South Fork Salmon River's and South Fork Salmon River's water quality and fishery through new mining activity is unacceptable to the Tribe as such activity

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would further harm the physical, cultural, spiritual, and economic health of the Tribe, its members, and surrounding communities.

To safeguard the Tribe's paramount rights and interests in and around the Stibnite Site, the Tribe initiated a federal lawsuit against Midas Gold in 2019. The lawsuit alleges that the company is illegally discharging pollutants at the Stibnite Site, without a permit, in violation of the Clean Water Act. Since that time, and consistent with EPA's treaty and trust responsibilities to the Tribe, EPA regional staff have provided the Tribe with updates on discussions between the agency and Midas Gold concerning development of an AOC. Given the history of contamination at the Stibnite Site and the inadequacy of previous CERCLA removal actions at the Stibnite Site, it is imperative that EPA develop, and Midas Gold agree to, an AOC that comprehensively addresses, at minimum, all of the pollutant discharges identified by the Tribe in its lawsuit against the company.

EPA should not issue an AOC if it does not require actions by Midas Gold substantially above and beyond their current mining plan. Otherwise, an AOC may simply act as a liability shield for Midas Gold, allowing the company to do the bare minimum, or even avoid altogether, cleaning up the Site. If Midas Gold is to be held accountable for its declared intention to "restore the site," any AOC must thoroughly and thoughtfully proscribe both interim and long term actions that will protect the Tribe's Treaty-reserved resources and the environment, now and into the future.


Based on government-to-government interactions with EPA Region 10 to date, the Tribe believes that EPA Region 10 remains fully committed to an AOC process that results in both the protection of the Tribe's Treaty-reserved resources and rights and the fulfillment of CERCLA's mandate to provide for interim measures, long-term monitoring, and adequate financial assurance to address this type of environmental harm.

The Tribe looks forward to discussing these issues in more detail with you as soon as possible and sufficiently in advance of any decision on a potential AOC, consistent with applicable executive orders and the agency's policies on consultation and the protection of treaty rights.

Please contact me at (208) 843-2253 to schedule this important consultation.

Sincerely,



 Shannon F. Wheeler
Chairman

cc: Mr. Christopher Hladick, EPA Region 10 Administrator (hladick.christopher@epa.gov)